

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

| | | |
|---------------|---|---------------------|
| MICHAEL WEST, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 4:07CV01466 ERW |
| |) | |
| ALAN STAHL, |) | |
| |) | |
| Respondent. |) | |

MEMORANDUM AND ORDER

This matter is before the Court on petitioner’s motion for reconsideration. The motion will be denied.

Petitioner filed a petition for writ of habeas corpus on August 16, 2007. The Court summarily dismissed the petition on October 17, 2007, because it was clear from the face of the petition that petitioner had not exhausted his available state remedies. Petitioner now moves the Court to reconsider its decision on the basis that he filed a motion for post-conviction relief in the state trial court and, after the motion was denied, he sought discretionary review of the denial with the Missouri Supreme Court.

“As a prerequisite for federal habeas review, a petitioner must exhaust state remedies . . .” Frederickson v. Wood, 87 F.3d 244, 245 (8th Cir. 1996). In Missouri, exhaustion includes filing a direct appeal of the denial of a motion for post-conviction

relief. Mo. R. Crim. P. 24.035(k). Petitioner admits that he did not seek such direct review, and his petition is therefore procedurally barred.

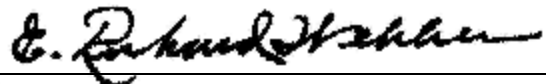
Where a claim is defaulted, a federal habeas court will consider it only where the petitioner can establish either cause for the default and actual prejudice, or that the default will result in a fundamental miscarriage of justice. Moore-El v. Luebbbers, 446 F.3d 890, 896 (8th Cir. 2006). The Court has reviewed all of the filings submitted by petitioner and finds that no miscarriage of justice will result from the denial of the instant motion.

Accordingly,

IT IS HEREBY ORDERED that petitioner's motion for reconsideration is **DENIED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability because petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253.

So Ordered this 24th Day of October, 2007.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written over a horizontal line.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE